

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Samuel Love,

Plaintiff,

v.

Spectrum San Pablo, LLC, a
California Limited Liability
Company;
Nation's Giant Hamburgers
No.9/No.8, a California Limited
Partnership;
Nation's Foodservice, Inc., a
California Corporation; and Does 1-
10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Samuel Love complains of Spectrum San Pablo, LLC, a California Limited Liability Company; Nation's Giant Hamburgers No.9/No.8, a California Limited Partnership; Nation's Foodservice, Inc., a California Corporation; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He is a paraplegic who uses a wheelchair for mobility.

2. Defendant Spectrum San Pablo, LLC owned the real property located at or about 16396 San Pablo Avenue, San Pablo, California, in March 2019.

3. Defendant Spectrum San Pablo, LLC owns the real property located at or about 16396 San Pablo Avenue, San Pablo, California, currently.

4. Defendants Nation's Giant Hamburgers No.9/No.8 and Nation's Foodservice, Inc. owned Nation's Giant Hamburgers located at or about 16396 San Pablo Avenue, San Pablo, California, in March 2019.

5. Defendants Nation's Giant Hamburgers No.9/No.8 and Nation's Foodservice, Inc. own Nation's Giant Hamburgers ("Restaurant") located at or about 16396 San Pablo Avenue, San Pablo, California, currently.

6. Plaintiff does not know the true names of Defendants, their business capacities, their ownership connection to the property and business, or their relative responsibilities in causing the access violations herein complained of, and alleges a joint venture and common enterprise by all such Defendants. Plaintiff is informed and believes that each of the Defendants herein, including Does 1 through 10, inclusive, is responsible in some capacity for the events herein alleged, or is a necessary party for obtaining appropriate relief. Plaintiff will seek leave to amend when the true names, capacities, connections, and responsibilities of the Defendants and Does 1 through 10, inclusive, are ascertained.

JURISDICTION & VENUE:

7. The Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with

1 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

2 8. Pursuant to supplemental jurisdiction, an attendant and related cause
3 of action, arising from the same nucleus of operative facts and arising out of
4 the same transactions, is also brought under California's Unruh Civil Rights
5 Act, which act expressly incorporates the Americans with Disabilities Act.

6 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
7 founded on the fact that the real property which is the subject of this action is
8 located in this district and that Plaintiff's cause of action arose in this district.

9
10 **FACTUAL ALLEGATIONS:**

11 10. Plaintiff went to the Restaurant in March 2019 with the intention to
12 avail himself of its goods or services and to assess the business for compliance
13 with the disability access laws.

14 11. The Restaurant is a facility open to the public, a place of public
15 accommodation, and a business establishment.

16 12. Parking spaces are one of the facilities, privileges, and advantages
17 offered by Defendants to patrons of the Restaurant.

18 13. Unfortunately, on the date of the plaintiff's visit, the defendants did not
19 provide any reserved and marked parking space for persons with disabilities.
20 While there is ADA pole-mounted signage, indicating that an accessible
21 parking space once existed at this location, the paint has been allowed to fade
22 to the point that the old parking space is no longer visible (the blue paint is no
23 longer present) and no longer alerts ambulatory customers, who are not
24 disabled, that the space is reserved for persons with disabilities.

25 14. In fact, on the two days that plaintiff's investigator visited the site there
26 was a vehicle in the stall directly in front of the ADA pole-mounted signage.
27 The vehicles did not have an ADA hang tag in the rear-view mirror, there were
28 no ADA license plates, and there were no tags otherwise signifying that the

1 customers using the parking stall were persons with disabilities.

2 15. During plaintiff's investigator's second visit, another car was parked in
3 the area that was, at one time, an access aisle that accompanied the old, faded
4 parking stall that was at one time striped for persons with disabilities.

5 16. Currently, the defendants do not provide accessible parking.

6 17. Plaintiff personally encountered this barrier.

7 18. By failing to provide accessible parking, the defendants denied the
8 plaintiff full and equal access.

9 19. The lack of accessible parking created difficulty and discomfort for the
10 Plaintiff.

11 20. Outdoor dining tables are one of the facilities, privileges, and
12 advantages offered by Defendants to patrons of the Restaurant.

13 21. Unfortunately, the defendants do not provide accessible outdoor dining
14 tables in conformance with the ADA Standards.

15 22. The defendants have failed to maintain in working and useable
16 conditions those features required to provide ready access to persons with
17 disabilities.

18 23. The barriers identified above are easily removed without much
19 difficulty or expense. They are the types of barriers identified by the
20 Department of Justice as presumably readily achievable to remove and, in fact,
21 these barriers are readily achievable to remove. Moreover, there are numerous
22 alternative accommodations that could be made to provide a greater level of
23 access if complete removal were not achievable.

24 24. Plaintiff will return to the Restaurant to avail himself of goods or
25 services and to determine compliance with the disability access laws once it is
26 represented to him that the Restaurant and its facilities are accessible. Plaintiff
27 is currently deterred from doing so because of his knowledge of the existing
28 barriers and his uncertainty about the existence of yet other barriers on the

1 site. If the barriers are not removed, the plaintiff will face unlawful and
2 discriminatory barriers again.

3 25. Given the obvious and blatant nature of the barriers and violations
4 alleged herein, the plaintiff alleges, on information and belief, that there are
5 other violations and barriers on the site that relate to his disability. Plaintiff will
6 amend the complaint, to provide proper notice regarding the scope of this
7 lawsuit, once he conducts a site inspection. However, please be on notice that
8 the plaintiff seeks to have all barriers related to his disability remedied. See
9 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
10 encounters one barrier at a site, he can sue to have all barriers that relate to his
11 disability removed regardless of whether he personally encountered them).

12
13 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
14 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
15 Defendants.) (42 U.S.C. section 12101, et seq.)

16 26. Plaintiff re-pleads and incorporates by reference, as if fully set forth
17 again herein, the allegations contained in all prior paragraphs of this
18 complaint.

19 27. Under the ADA, it is an act of discrimination to fail to ensure that the
20 privileges, advantages, accommodations, facilities, goods and services of any
21 place of public accommodation is offered on a full and equal basis by anyone
22 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
23 § 12182(a). Discrimination is defined, inter alia, as follows:

- 24 a. A failure to make reasonable modifications in policies, practices,
25 or procedures, when such modifications are necessary to afford
26 goods, services, facilities, privileges, advantages, or
27 accommodations to individuals with disabilities, unless the
28 accommodation would work a fundamental alteration of those

1 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

2 b. A failure to remove architectural barriers where such removal is
3 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
4 defined by reference to the ADA Standards.

5 c. A failure to make alterations in such a manner that, to the
6 maximum extent feasible, the altered portions of the facility are
7 readily accessible to and usable by individuals with disabilities,
8 including individuals who use wheelchairs or to ensure that, to the
9 maximum extent feasible, the path of travel to the altered area and
10 the bathrooms, telephones, and drinking fountains serving the
11 altered area, are readily accessible to and usable by individuals
12 with disabilities. 42 U.S.C. § 12183(a)(2).

13 28. When a business provides parking for its customers, it must provide
14 accessible parking in compliance with the ADA Standards.

15 29. Here, the lack of accessible parking is a violation of the law.

16 30. When a business provides outdoor dining tables for its customers, it
17 must provide accessible outdoor dining tables in compliance with the ADA
18 Standards.

19 31. Here, the lack of accessible outdoor dining tables is a violation of the
20 law.

21 32. The Safe Harbor provisions of the 2010 Standards are not applicable
22 here because the conditions challenged in this lawsuit do not comply with the
23 1991 Standards.

24 33. A public accommodation must maintain in operable working condition
25 those features of its facilities and equipment that are required to be readily
26 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

27 34. Here, the failure to ensure that the accessible facilities were available
28 and ready to be used by the plaintiff is a violation of the law.

1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
 2 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
 3 Code § 51-53.)

4 35. Plaintiff repleads and incorporates by reference, as if fully set forth
 5 again herein, the allegations contained in all prior paragraphs of this
 6 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
 7 that persons with disabilities are entitled to full and equal accommodations,
 8 advantages, facilities, privileges, or services in all business establishment of
 9 every kind whatsoever within the jurisdiction of the State of California. Cal.
 10 Civ. Code § 51(b).

11 36. The Unruh Act provides that a violation of the ADA is a violation of the
 12 Unruh Act. Cal. Civ. Code, § 51(f).

13 37. Defendants’ acts and omissions, as herein alleged, have violated the
 14 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
 15 rights to full and equal use of the accommodations, advantages, facilities,
 16 privileges, or services offered.

17 38. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
 18 discomfort or embarrassment for the plaintiff, the defendants are also each
 19 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
 20 (c).)

21
 22 **PRAYER:**

23 Wherefore, Plaintiff prays that this Court award damages and provide
 24 relief as follows:

25 1. For injunctive relief, compelling Defendants to comply with the
 26 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
 27 plaintiff is not invoking section 55 of the California Civil Code and is not
 28 seeking injunctive relief under the Disabled Persons Act at all.

1 2. Damages under the Unruh Civil Rights Act, which provides for actual
2 damages and a statutory minimum of \$4,000 for each offense.

3 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
4 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

5
6 Dated: April 4, 2019

CENTER FOR DISABILITY ACCESS

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8 By:



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10 Amanda Seabock, Esq.
11 Attorney for plaintiff
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